

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/18/2023

RENEE SCHWARTZ,

Plaintiff,

-against-

LIVEON NY,

Defendant.

23-cv-04023-MKV

ORDER OF DISMISSAL

MARY KAY VYSKOCIL, United States District Judge:

A review of court records indicates that the complaint in this action was filed on May 16, 2023, ECF No. 1, and that no proof of service of the summons and complaint has been filed.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

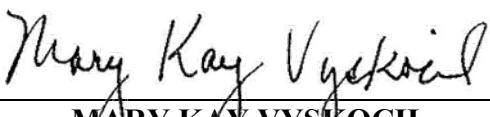
On August 22, 2023, the Court issued an Order to Show Cause directing the Plaintiff to serve the summons and complaint on the defendant on or before September 15, 2023. The Court informed Plaintiff that “[i]f service has not been made on or before September 15, 2023, and if plaintiff fails to show cause, in writing, why service has not been made, the complaint will be dismissed for failure to prosecute pursuant to Rules 4 and 41 of the Federal Rules of Civil Procedure.” [ECF No. 2]. To date, the summons and complaint have not been served on the defendant, nor has Plaintiff made any showing, in writing, why service has not been made.

Accordingly, IT IS HEREBY ORDERED that the above-captioned action is discontinued for failure to prosecute without costs to any party and without prejudice to restoring the action to this Court’s calendar if the application to restore the action is made by October 18, 2023. If no

such application is made by that date, today's dismissal of the action is with prejudice. *See LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)).

SO ORDERED.

Date: September 18, 2023
New York, NY



MARY KAY VYSKOCIL
United States District Judge